

EXHIBIT E



Compressed Transcript of the Testimony of
JOE WENSLAUSKIS, 12/8/10

Case: Anderson v. AFNI, Inc.

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1 Q. All right. I also want to make sure you
2 know we actually didn't notice the deposition that
3 said for Mr. Wenslauskis. We noticed a deposition
4 that said we wanted a corporate representative
5 from Afni, who among other things was familiar
6 with the automated dialing system that Afni uses
7 to call consumers. So I want you to know your
8 testimony today will be binding on the company and
9 it won't just be from Mr. Wenslauskis. Do you
10 understand that as well?

11 A. Sure.

12 Q. Have you ever been deposed before?

13 A. No, I have not.

14 Q. Have you ever testified at trial before?

15 A. Nope.

16 Q. Okay. Before your testimony today, did
17 you have an opportunity to review any materials?
18 And before you answer that, I want to make sure
19 that you know I don't want to know what you and
20 Mr. Perr talked about or if you had conversations
21 with other in-house counsel. I just want to know
22 if you spoke to anybody about your testimony today
23 before we had an opportunity to take this
24 deposition?

1 telephone calls, I have no idea what that means.

2 Can you please explain?

3 A. You can use the traditional phone lines,
4 which is like your trunk groups, the phone like
5 we're on here today, and that's a standard phone
6 call like you would have out of your house. Or if
7 you go the voice-over IP/Internet type route, it's
8 more of a data type, it converts the voice into
9 data, then expands it again to the voice when it
10 reaches its destination. So it's just different
11 channel to communicate. Does that --

12 Q. But Livevox -- go ahead?

13 A. I was just asking if that helped.

14 Q. No, no, I appreciate that. And Livevox
15 uses the VO/IP or does it use traditional
16 telephone communication?

17 A. SoundBite is the traditional form of
18 communication where it uses the actual phone line.
19 Livevox is more of the voice-over
20 IP/Internet-based communication tool.

21 Q. Do you have any idea the amount of
22 volume that these two processes, the amount of
23 volume of calls they make in the period of a day?

24 A. For Afni specific?

1 Q. Yeah. Just for Afni.

2 A. Typically we probably make in the
3 neighborhood of nine hundred thousand to a million
4 attempts per day.

5 Q. And that's between these two vendors?

6 A. Split between the two vendors, correct.

7 Q. Okay. Pretty equally, like a 50/50?

8 A. No. I'd say more than 90 percent of it
9 goes to the SoundBite.

10 Q. Okay. And where is SoundBites located?

11 A. Boston.

12 Q. And essentially it does the same type of
13 thing? It originates telephone calls, only it
14 uses that over the actual phone lines?

15 A. Pretty much, yes.

16 Q. Okay. And now do these two vendors, do
17 they provide an interface to your collectors?
18 What I mean by interface is perhaps a computer
19 program or something of that nature?

20 A. There is a web interface that's
21 available for the collectors. It's more prevalent
22 in the Livevox system with how we use that tool,
23 versus the SoundBite tool.

24 Q. Do these two individual vendors, do they

1 utilize and make the calls from.

2 Q. Okay. Do you have any idea where those
3 data centers are located for Livevox?

4 A. I believe one of the data centers is in
5 San Francisco. And I'm uncertain where the other
6 ones are located. I know SoundBite has six data
7 centers throughout the United States and a couple
8 overseas, but I'm not sure where they're located
9 as well. By data center, it's very similar to
10 what you use for your local Internet; when you
11 connect to the Internet it's the same type of
12 concept. They have a big warehouse and data
13 center that can handle that type of volumes.

14 Q. So, by and large it's not populated by a
15 room full of collectors?

16 A. Nope. It's strictly hardware.

17 Q. As far as you know, how is information
18 fed to either Livevox or SoundBite? When I mean
19 information, I mean information about the consumer
20 that is to be called by Afni?

21 A. We send a daily file to each of the
22 vendors via a secure file transfer process, and it
23 is loaded into their systems at that time.

24 Q. If you don't mind me asking, where do

1 A. Well, the one pretty solid criteria that
2 we have is if we reach a live person or play an
3 answering machine message it's done. For the
4 others, for the retries, that's based on decisions
5 made by the strategy team, and I just pretty much
6 put in force what they decide as the best strategy
7 for the business.

8 Q. Okay. So you're not involved in
9 determining whether a new file should be called
10 more frequently than an old file etc., etc.?

11 A. No, I can make recommendations based on
12 what I see, but that's basically up to the
13 strategy team.

14 Q. Okay. Can you kind of give me an idea
15 of what happened if say I have a lot of student
16 loans and I default on my student loans and I get
17 sold into collections and Afni buys my account.
18 Can you tell me what I would experience if I were
19 to receive a telephone call from Afni from either
20 one of these Livevox or SoundBite vendors?

21 A. From the customer experience? Sure. If
22 we were making an outbound call using the
23 SoundBite product, again it's a text to speech
24 type product. So when we make the call we would

1 announce that we are Afni calling and we would
2 also input the name on the account. So we would
3 say who we are, and we are calling for X person.
4 You then have a series of options we would give
5 you. If we reached you correctly, press one. If
6 you needed to put the customer on hold to, if you
7 need to put us on hold to go reach this person,
8 press two. If you just like to take a message at
9 this time, three. Or if we reached you
10 incorrectly, if we got the wrong phone number,
11 press four.

12 And based on your selection there's a
13 series of other things that happen. If you press
14 one it's the right person, we would then bridge
15 you with an agent where you can talk to an agent
16 here at our facility. If you chose four, nope,
17 you got the wrong person, we're sorry for the
18 inconvenience, we will have your number removed
19 from the system. And then at that point we would
20 have that taken out. So that's basically the
21 experience that you would see.

22 Q. Okay. So when you say that there is an
23 announcement that this is Afni, etc., etc., is
24 that a prerecorded message?

1 A. Yeah, it's prerecorded with what they
2 call text-to-speech technology, so at certain
3 points within the recording we would, hi, this is
4 Afni with a phone call for, then we would actually
5 say your name. We're calling regarding X, you
6 know. We would input specific day to your
7 particular account throughout the call.

8 Q. Okay. So when you say text to speech,
9 my experience as a consumer would be perhaps a
10 robot voice or are you saying that an actual
11 person prerecords their voice and inputs it on to
12 the answering machine or the call being put out to
13 the consumer?

14 A. It's a lot different than what you would
15 think of in terms of the robot voice. What the
16 vendors have done is, what SoundBite has done, I'm
17 not sure if Livevox has done the same thing, but
18 to prevent that robot sounding voice, I think they
19 recorded a million possible name combinations. So
20 Smith is very common. So Smith would be recorded.
21 Or Joe would be recorded. So they had a person
22 actually go through and record all those names
23 live. And as well as phone numbers, because we
24 also recite phone numbers in this speech.

1 So, instead of the robot where it says
2 one eight zero zero, it will actually say 1-800,
3 it sounds more realistic there in the approach.
4 So in a sense they are preread and recorded, but
5 by the vendor, not by us.

6 Q. Thank you. I appreciate the
7 distinction. Me as a consumer, would I be able to
8 tell it's prerecorded, or is it so similar to
9 human speech pattern that I would think it's a
10 real person?

11 A. In my opinion I think it sounds more and
12 more like the real person than it ever has. I
13 don't think it sounds very robotic. It even
14 pronounces my name, which is surprising.

15 Q. That's better than I can do.

16 A. So, it's pretty good technology now.
17 It's come a long way. I think five years ago it
18 would have sounded just like a robot, but it's
19 much better now.

20 Q. So, once I get this phone call and I get
21 the options, let's say I do press one, you say
22 you're calling for Erin Novak because I owe a
23 debt, what happens after that?

24 A. Well, when you press one, we would then

1 bridge you with a collector here at Afni. We
2 would then connect you with a live person.

3 Q. Okay. Is there a down time? Is there a
4 waiting period until it reroutes you to a specific
5 collector?

6 A. No. We try not to put any of the
7 outbound calls on hold. And how we manage that is
8 with our inbound queues, when an outbound call is
9 presented to an agent here at Afni, it comes
10 through the inbound queue. So, any agent within
11 our facility in that group that's scheduled to
12 answer the call can get the call. Whoever is
13 available first gets it, and then it pops up on
14 their desktop that they have you on the line.

15 So, it's not like there's four or five
16 calls being made and hopes that we get one, and it
17 goes to an agent, and if there's three, they get
18 put on hold. We try not to put anybody on hold
19 there.

20 Q. So, am I to understand from that
21 statement that there's no specific collector
22 sitting in an Afni facility with the intent to
23 call Tara Anderson or Erin Novak or anyone? They
24 just pick up a call from a queue that's routed to

1 them by one of your two vendors?

2 A. Right. Agent X isn't sitting there
3 saying I would like to call Tara. Agent X will
4 receive a call from a Tara or whomever we dial
5 based on the outbound events that are occurring in
6 the background.

7 Q. And all the telephone calls that are
8 picked up by a consumer, there will be some sort
9 of automated message at some point once they pick
10 up the telephone call, correct?

11 A. Yes.

12 Q. And I'm sorry, what I mean by automated
13 is the prerecorded, pretty life-like voice message
14 that we just spoke about?

15 A. Right.

16 Q. And all messages that are going to go to
17 any answering machine are also prerecorded as
18 well, right?

19 A. Yes.

20 Q. And that would be -- is a voice mail
21 message or an answering machine message left every
22 time there is a nonanswered telephone call placed
23 by one of your two vendors?

24 A. No.

1 we want to play or not play an answering machine
2 with this particular client or this particular
3 group of calls. And I just basically put it in
4 the system as the strategy team dictates.

5 Q. But certainly the program has the
6 capacity or the ability to leave an automated
7 message every time a call is initiated by one of
8 your two vendors on behalf of Afni, correct?

9 A. It has the ability to play a message
10 every time it detects a machine unless the machine
11 mailbox is full or something along those lines.
12 But for the most part you can play a message with
13 every answering machine you get.

14 Q. But I guess my question was, that
15 there's the capacity every time the call is
16 initiated so prior to the call being answered or
17 prior to the call going to an answering machine,
18 your two vendors have the ability to leave an
19 automated message for the consumer, correct?

20 A. Yeah, that's predetermined before the
21 campaign is launched. You either play messages or
22 don't play messages. It's not specific to one
23 account or the other. It's specific to the whole
24 group of accounts being dialed. Either we play a

1 message for all of them or none of them. They all
2 follow the same set of parameters.

3 Q. Okay. And Afni's records, how do they
4 go about memorializing the different types of
5 calls that are received by consumers? I mean, do
6 they memorialize if the consumer actually spoke to
7 a live consultant, or if they were left a message,
8 or if there was a busy, or if it was unanswered,
9 just is there a way in which Afni has records
10 sitting back which of those instances happened?

11 A. Yeah. We have records of all the calls
12 which are available to us in the data base from
13 each of the vendors. And we also compile a return
14 file with all of the hourly results of our
15 outbound activity that we load into our host
16 system.

17 Q. Okay. So there's something called a
18 return file, and then there's also information
19 collected from your two vendors, SoundBite and
20 Livevox?

21 A. Right.

22 Q. And is the return file a conglomeration
23 of both of your vendors?

24 A. No, they're individual files.

1 correct?

2 A. Right.

3 Q. Okay. And no matter how that call was
4 placed, at some point in that message there was a
5 prerecorded life-like automated message delivered
6 to the person on the other end, correct?

7 A. Not in every instance, no.

8 MR. PERR: Objection to the question, not
9 necessarily any foundation, just anybody on the
10 other end.

11 Q. Okay. So, Exhibit 1 shows that 45
12 telephone calls were placed by Afni to Tara
13 Anderson's telephone number, which I will
14 represent to you is listed on the top of the page
15 and ends in 2345 through one of its vendors,
16 correct? There appears to be 45 telephone calls
17 placed by Afni here?

18 A. That I'm not sure. It says 76 on mine,
19 but that includes the never tries.

20 Q. Okay. Well, okay. So each of these 40
21 -- take my representation that there is 45, I have
22 had the time and opportunity to call, in addition
23 to those are the never tried. Why don't you
24 eliminate the never tried from the report?

1 A. We can, if that's what was requested, I
2 just put every instance that it shows up in the
3 file.

4 Q. Okay.

5 A. No particular -- we can add them or
6 remove them.

7 Q. So, you don't eliminate never tried
8 from this list?

9 A. From this report, no. I just include
10 every instance. And let whoever receives the
11 report make the determination of what information
12 they're looking for.

13 Q. Okay. I don't mean to be rude, but
14 would you be at all opposed if I could take a
15 brief bathroom break.

16 (A break was taken at 11:19 a.m.)

17 (The time is 11:36 a.m.)

18 FURTHER EXAMINATION BY

19 MS. NOVAK:

20 Q. Mr. Wenslauskis, I just want to turn
21 your attention back to Wenslauskis 1, the exhibit
22 that we marked for your deposition. Can you agree
23 with me that at the very top of the page it says
24 76 attempts found?

1 automated voice, correct?

2 A. Yeah, it would have been prerecorded
3 with the text speech and all that kind of stuff.
4 They would have heard hello, this is Afni calling
5 for X. But in terms of what their attendant
6 choices would have been, I don't know what they
7 would have done in the call.

8 Q. Okay. I appreciate that. So, how many
9 delivered person telephone calls are on this
10 exhibit?

11 A. I counted 18.

12 Q. Okay. So, on at least 18 instances
13 somebody picked up at this telephone number and
14 what they would have heard was a prerecorded
15 automated voice?

16 A. Yeah, they would have heard the start of
17 a prerecorded message.

18 Q. Okay. So each of the 45 calls on
19 Exhibit A that we've -- or sorry, Exhibit 1 that
20 we've identified as calls that were tried, if
21 someone were to have answered that telephone call
22 they would have received that same automated
23 message, correct?

24 A. So you're saying if a live person would

1 have picked up on one of the dispositions that
2 says answer machine, would they have gotten a
3 message?

4 Q. Well, in the classification that there
5 are 76 attempts, there are 45 tries, or 45
6 campaigns wherein it's not a never tried, if the
7 telephone would have been answered, the person
8 picking it up would have heard a prerecorded voice
9 or prerecorded automated message for those 45
10 tries, correct?

11 A. So basically what you are saying in the
12 event of, rather an answering machine, a live
13 person picked up and said hello, would they have
14 heard a message, is that right?

15 Q. Correct.

16 A. Yeah, then they would have heard the
17 start of our entry or message.

18 Q. And all 45 of these calls, just to be
19 clear, were ordered by Afni? They weren't ordered
20 by any other individual or any other corporation,
21 correct?

22 A. Yes, we made the calls.

23 Q. Okay. So we've talked about a never
24 tried, we have spoken about machine hang-up. Do

1 A. Any codes on this particular report? Or
2 in general?

3 Q. Well, first of all on this particular
4 report for 2345 or in general in the world of auto
5 dialers for Afni.

6 A. Well, we -- there's duplicate on this
7 report. And duplicate means that that account or
8 phone number came up twice in the same list. So,
9 it was removed from dialing. There's a potential
10 to get no answer. The phone rings X number of
11 times and it determines it's a no answer. There
12 is a potential for a busy. There's a potential
13 for a three tone if the number is bad. There's
14 quite a long list of results.

15 Q. Okay. But, within the universe of this
16 particular report from SoundBite, we just have
17 never tried, machine hang-up, and delivered
18 person, in addition to the duplicate?

19 A. That looks to be about right.

20 Q. Okay. So let me kind of make sure I
21 have exactly what is going on with Wenslauskis
22 Exhibit 1. It looks like there is 76 attempts on
23 this report, is that correct?

24 A. 76 instances of the account showing up

1 in the files.

2 Q. But, it's indicated as 76 attempts on
3 the top of Wenslauskis No. 1?

4 A. Yeah, that's what it says at the top.

5 Q. Okay. And of those 76 attempts, there
6 were 45 tries, or as I've described before, 45
7 instances where the campaign indicates something
8 other than quote, unquote "never tried", correct?

9 A. Correct.

10 Q. And these are 45 tries where Afni would
11 have been able to deliver a prerecorded automated
12 message had the person actually picked up the
13 telephone, correct?

14 A. Had a live person picked up the phone,
15 they would have had the ability to get a message,
16 right.

17 Q. Okay. And these are calls by Afni,
18 these 45 tries are actual calls?

19 A. They're actual calls, correct.

20 Q. And there's at least 18 attempts or 18
21 campaigns on this Wenslauskis Exhibit 1 where Afni
22 actually had a pick up or an individual at this
23 extension or this telephone number, 412 [REDACTED] 2345
24 actually picked up and was in contact with the

1 prerecorded automated message, correct?

2 A. That delivered person, yeah. We don't
3 know to what extent they listened to the message,
4 but they got some portion of the message. Where
5 they would have gone, etc. -- yeah, just for
6 clarification purposes. They picked up the phone,
7 they would have heard a message, for example a lot
8 of these are sub ten seconds, so they would have
9 heard hi, this is Afni calling for, and it more
10 than likely would have been a hang-up instead of
11 choosing option one, two, three or four.

12 So I don't -- this report doesn't give
13 us the level of detail to say at what point did
14 they hang-up or at what point did they make a
15 choice. So we don't know that they got 50 percent
16 of the message, the whole message, a portion of
17 the message. I can't say for certain that they
18 got the full message or they even knew that,
19 listened to it to the point where we were saying
20 what we were asking for.

21 So, I don't want you to think that the
22 whole message is delivered, that we played,
23 executed it, the whole thing is done.

24 Q. Okay. But we can agree that of all 18

1 of these campaigns indicated as delivered, at
2 least some portion of the prerecorded automated
3 message was played, correct?

4 A. It would have kicked off and started,
5 correct.

6 Q. I just want to rewind one quick thing,
7 we're almost done. I just wanted to discuss, I
8 had a chance to review my notes, just to confirm,
9 there's two vendors that Afni uses for its dialing
10 and account purposes named Livevox and SoundBite,
11 correct?

12 A. Correct. Yes.

13 Q. Are there any other vendors that are
14 used for dialing purposes or account recovery
15 purposes?

16 A. No. Just SoundBite and Livevox.

17 Q. Does Afni have any of its own call
18 initiating programs where it would not use
19 Livevox, it would not use SoundBite, but it would
20 initiate a call on its own accord?

21 A. Randomly call a number, no.

22 Q. So, collectors don't randomly call
23 numbers using their actual fingertips?

24 A. Oh, collector-initiated calling, yes.